

**STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i
October 28, 2010**

CDUP: HA-3514

**Board of Land and
Natural Resources
State of Hawai'i
Honolulu, Hawai'i**

REGARDING: Time Extension Request for Conservation District Use Permit (CDUP) HA-3514 for Hale Piula Haina Native Forest and Bird Habitat Restoration Activities and Research Facility

APPLICANT: Henk and Akemi Rogers

LANDOWNER: Henk and Akemi Rogers

LOCATION: Pu'u Wa'awa'a, North Kona, Hawai'i

TMK: (3) 7-1-001:003 and 7-1-001:006 & 007 (road)

AREA/PARCEL: 2.755 acres

AREA/USE: 2.755 acres

SUBZONE: Resource Subzone

BACKGROUND:

On October 23, 2009, the Board approved CDUA HA-3514 for the construction of the Hale Piula Haina Native Forest and Bird Habitat Restoration and Research Facility located at Pu'u Wa'awa'a, North Kona, Hawai'i, TMK: (3) 7-1-001:003 (Exhibit 1), subject to 19 conditions. Condition 14 provided that any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within three (3) years of the approval of such use. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed (Exhibit 2).

TIME EXTENSION REQUEST:

On October 13, 2010, the Office of Conservation and Coastal Lands (OCCL) received a correspondence stating that the Permittee required additional time to comply with CDUP conditions, in particular, obtaining a disposition from the State for an access easement (Exhibit 3). An extension to June 30, 2011 to initiate construction is requested.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for the granting of time extensions is provided in Section 13-5-43, Hawai'i Administrative Rules (HAR), which allows for permittees to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

Additionally, §13-5-43, HAR, states that: "All time extensions shall be submitted to the department thirty days before the expiration deadline. If a request is received less than thirty days before the due date the request for time extension shall be forwarded to the Board for review."

BASIS FOR TIME EXTENSIONS:

A time extension may be sought when a Permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a Permittee demonstrates some sort of hardship or delay in initiating work on a particular project. Moreover, the Permittee should be able to demonstrate that the hardship or delay has not been self-imposed and that some good faith effort has been made to undertake the project.

DISCUSSION:

In the present case, none of these factors suggest any reason to deny the requested time extension. The Permittee is in the process of obtaining permits and approvals to initiate project construction. Approval of the time extension request will hopefully provide the additional time needed to complete these approvals.

Staff, therefore, has the following:

RECOMMENDATION:

That the Board of Land and Natural Resources APPROVE an extension to June 30, 2011 to initiate construction of the Rogers Native Forest and Bird Habitat Restoration and Research Facility Located at Pu'u Wa'awa'a, North Kona, Hawai'i, subject to the following conditions:

1. That Condition 14 of CDUA HA-3514 is amended to provide that the Permittee has until June 30, 2011 to initiate construction; and
2. That all other conditions imposed by the Board under CDUP HA-3514, as amended, shall remain in effect.


Respectfully Submitted,



Audrey Barker, Staff Planner
Office of Conservation and Coastal Lands

Approved for Submittal:

By:

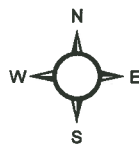


LAURA H. THIBAU~~T~~LEN, Chairperson
Board of Land and Natural Resources

Subzone Map for TMK: (3) 7-1-001:003



1 Miles



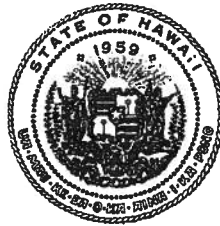
Legend

Subzones

- Undesignated
- General
- Limited
- Protective
- Resource
- Special



EXHIBIT I



RECEIVED
DEPT. OF CONSERVATION
COASTAL LANDS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809
NOV 13 A 8:53
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
RUSSELL Y. TSUJI
FIRST DEPUTY
KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:AB

CDUP HA-3514

OCT 28 2009

Gregory R. Mooers
Mooers Enterprises, LLC
P.O. Box 1101
Kamuela, Hawai'i 96743

SUBJECT: Conservation District Use Permit (CDUP) HA-3514 for Native Forest and Bird Habitat Restoration and Research Facility Located at Pu'u Wa'awa'a, North Kona, Hawai'i, TMK: (3) 7-1-001:003

Dear Mr. Mooers:

This is to inform you that on October 23, 2009, the Board of Land and Natural Resources approved your Conservation District Use Application HA-3514 for native forest and bird habitat restoration and research facility located at Pu'u Wa'awa'a, North Kona, Hawai'i, TMK: (3) 7-1-001:003, subject to the following conditions:

1. The applicant shall submit a management plan, including weed and pest control techniques, to the OCCL for review and approval prior to commencement of any work;
2. The applicant shall prepare a data recovery plan for review and approval by SHPD and will implement the approved plan prior to demolition of the catchment system;
3. Access to the subject property will be through only one entrance to the PWWFBS. The applicant shall obtain a disposition from the State to utilize this access road. The applicant shall install a raised ungulate proof 18-foot cattle guard to protect against the gate being left open unintentionally and compromising future ungulate free status of PWWFBS. In addition, any repairs/maintenance to this road by the applicant will require prior State review and approval;
4. The applicant shall submit a Fire Management Plan to the OCCL for review and approval prior to commencement of any work. The applicant understands that access through PWWFBS may be strictly controlled (possibly denied) during fire danger periods;
5. The applicant shall submit detailed erosion control plans to the OCCL for review and approval prior to commencement of any work;

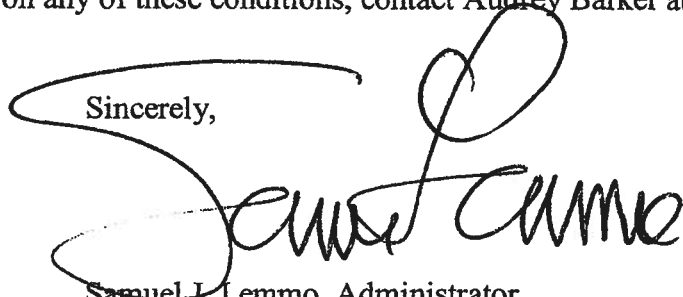
EXHIBIT 2

6. The applicant shall utilize DOFAW-approved seed stock for reforestation, and the nursery will be certified by the Department of Agriculture;
7. The applicant is encouraged to share data collection and research results with the Department;
8. Use of the facility for commercial purposes is prohibited;
9. Should research opportunities be exhausted on the subject property, the research station and related structures shall be removed;
10. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State, and County governments, and applicable parts of Chapter 13-5, HAR;
11. The applicant, its successors, and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
12. The applicant shall comply with all applicable Department of Health (DOH) administrative rules;
13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
14. Any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within three (3) years of the approval of such use. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
15. The applicant understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
16. In issuing the permit, the Department and Board have relied on the information and data which the applicant has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the Department may, in addition, institute appropriate legal proceedings;
17. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard within a time frame and manner prescribed by the Chairperson;

18. Other terms and conditions as prescribed by the Board; and
19. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

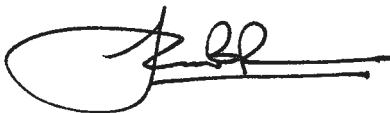
Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. **Retain one and return the other within thirty (30) days.** Should you have any questions on any of these conditions, contact Audrey Barker at (808) 587-0316.

Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

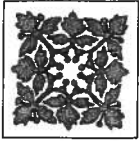
Receipt acknowledged:



Applicant's Signature

Date 11/3/09

c: Chairperson
HDLO
Hawai'i Planning Department



**Kukui
Planning
Company**

RECEIVED
DEPT. OF CONSERVATION
COASTAL LANDS
P.O. Box 437141
Kamuela, HI 96743
(808) 936-PLAN
kukuiplanning@gmail.com

2010 OCT 13 P 3:16

DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII
October 13, 2010

Ms. Audrey Barker
State of Hawaii Department of Land and Natural Resources
Office of Conservation and Coastal Lands
P.O. Box 621
Honolulu, HI 96809

Aloha Ms. Barker,

Per our communication Friday, October 1, 2010 regarding a time extension to achieving the conditions related to CDUP HA-3514, I hereby request such extension on behalf of Rogers Ranch, Henk and Akemi Rogers. We have been diligently working towards the completion of many of the conditions related to planning as described in the approval letter dated October 28, 2009. However, as we discussed the timing for accomplishing a critical component of obtaining a disposition from the State for an access easement will require approximately six additional months. To accommodate any further unforeseen delays, we request that the completion date be extended to June 30, 2011.

Once the easement process is complete, the complete Management Plan covering all conditions of the CDUP approval will be submitted to OCCL. I greatly appreciate your assistance with the appropriate implementation of the Hale Piula Haina Native Forest and Bird Habitat Restoration and Research Facility project.

Mahalo,

Michael L. Donoho
Kukui Planning Company, LLC